



Decision

Matter of: Draughn and Associates

File: B-258221

Date: December 28, 1994

Warren E. Boyd, Jr., and Jonathan Draughn for the protester. Marie N. Adamson, Esq., General Services Administration, for the agency. Robert Arsenoff, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest against exclusion of an offer from the competitive range is denied where record reflects that agency had a reasonable basis for rejecting protester's offer.

DECISION

Draughn and Associates protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. FCXS-F5-940001-N, issued by the General Services Administration (GSA) for investigation of discrimination complaints and preparation of equal employment opportunity (EEO) investigative reports. Successful awardees are to be listed in a Federal Supply Schedule so that agencies may order the EEO services in three geographic zones. Draughn submits that GSA misevaluated its technical proposal.

We deny the protest in part and dismiss it in part.

The RFP provided that awards would be made on the basis of price and technical merit with technical merit being more important. Technical merit was graded on a 100-point scale under three factors of descending order of importance--technical capability, plan of accomplishment, and experience/past performance. Only the first two factors are at issue in this protest.

Under the factor entitled technical capability, offerors were to submit: a documented EEO investigative report they had previously prepared; a draft EEO decision based upon a hypothetical complaint set forth in the RFP; and a sample investigative plan also based upon a hypothetical complaint set forth in the RFP. With regard to the requirement for a

documented investigative report, the RFP expressed a preference for a case involving a disability complaint and an issue of whether the employer had made a "reasonable accommodation" for the employee in light of the disability. The RFP further provided that, if an offeror could not obtain a waiver from a former client to release documentation for its proposal, the offeror could submit a "reconstructed" investigative report with a detailed narrative and sanitized summaries of backup documentation.

Under the factor entitled plan of accomplishment, offerors were to describe their quality control (QC) system, detail their personnel qualifications in each of the geographic zones for which they were making an offer, and describe their management strategy and organization.

Of the 17 proposals received, 6 were included in the competitive range. The overall technical scores for the competitive range proposals ranged from 44.01 points to 81.1 points. Draughn's proposal received 14.6 points and, as a result, was not included in the competitive range.

When GSA informed Draughn that its offer had been rejected, the agency noted that Draughn's "reconstructed" investigative report and sample decision contained problems with quality, accuracy, thoroughness and usability. Specifically, the agency pointed out that, although the complainant in Draughn's EEO case raised allegations relating to taunting and harassment, those issues did not appear to have been investigated. Further, the agency noted inconsistencies in the file relating to the identification of the complainant's disability. Finally, GSA indicated that Draughn's plan of accomplishment was unacceptable for failing to discuss contract management and reporting issues.

In its protest, Draughn took exception to GSA's evaluation, explaining that the taunting and harassment allegations were "intertwined with the issue of 'reasonable accommodation,'" and that the confusion over the complainant's medical condition was occasioned by not being able to obtain a waiver in order to produce more detailed information. The protester also generally took issue with the criticism of its plan of accomplishment alleging that it had provided an "in-depth" discussion of contract management and reporting issues. Draughn also alleged that the solicitation format requiring a sample investigative report under circumstances where a waiver cannot be obtained was unfair.

In response, GSA points out that, although the taunting and harassment allegations were discussed in the summary accounts of various witnesses, Draughn did not provide the actual statements of the witnesses as backup as required by the RFP. The agency further notes examples of other missing

witness statements. GSA also criticizes Draughn's explanation that the unavailability of detailed medical records excused the protester's failure to clarify the complainant's disability noting that the RFP allowed offerors to submit sanitized backup documents.

The evaluation record also contains numerous other findings with respect to Draughn's proposal which led to its low rating. These include the misidentification of several witnesses, a failure to adequately document the issue of reasonable accommodation, and a failure to supply documentary evidence in the form of leave slips requested of the complainant. Additionally, the evaluators noted that Draughn's sample decision based on the RFP hypothetical complaint failed to explain the reasoning behind Draughn's summary conclusion that the complainant had established a prima facie EEO case, failed to make recommendations for corrective action by the agency, and failed to specify any appeal rights. Draughn's sample investigative plan was faulted for failing to establish that the investigation would be completed in a timely manner.

Under the plan of accomplishment factor, the evaluators also noted that Draughn's plan was not specific with regard to performance standards and that Draughn failed to provide details on investigator training and did not address the contents of its corporate library. GSA also found that three of Draughn's proposed senior investigators did not meet minimum RFP personnel requirements.

Draughn's comments on the agency report address none of these specific findings. Rather, the protester generally alleges that agency personnel have not supported their conclusions and reiterates that it was hampered in preparing its proposal by a solicitation format which required detail even when a waiver to use privileged EEO information could not be obtained.

The evaluation of technical proposals and the resulting determination as to whether an offer is in the competitive range are matters within the discretion of the contracting agency. Consequently, we will review an evaluation solely to ensure that it was reasonable. Essex Electro Eng'rs, Inc., B-250862.2, Oct. 22, 1993, 93-2 CPD ¶ 248. A protester's mere disagreement with the agency's technical judgment does not serve to demonstrate that the agency's exclusion of a proposal from the competitive range was unreasonable or otherwise improper. Cincinnati Elecs. Corp., B-253814, Sept. 30, 1993, 93-2 CPD ¶ 205.

Here, the agency has set forth in detail numerous deficiencies in the protester's proposal under the two most important technical evaluation factors: technical

capability and plan of accomplishment. Those deficiencies include, but are not limited to, a lack of documentation as required by the RFP, a failure to meet minimum personnel requirements, and an inadequate QC plan. Our review of the protester's proposal and the evaluation materials reflects that the agency evaluators had a reasonable basis for rating Draughn's proposal as they did and, in view of the very low comparative rating received by the protester, the record supports GSA's decision to eliminate the proposal from the competitive range. Draughn has addressed none of the agency's specific findings and has at best established generalized disagreement with the results of GSA's technical evaluation; accordingly, we have no basis to overturn the agency's decision to eliminate the protester's proposal from the competitive range. Cincinnati Elec. Corp., supra.

To the extent that Draughn alleges that the solicitation format precluded the submission of an adequately detailed proposal when a waiver to use original EEO documentation could not be obtained, its protest is untimely. Solicitation improprieties which are apparent from the face of the solicitation must be protested prior to the time set for receipt of initial proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1994). Draughn failed to raise its allegation regarding the solicitation format prior to that time and, we, therefore, dismiss this aspect of the protest.

The protest is denied in part and dismissed in part.

\s\ Ronald Berger
for Robert P. Murphy
General Counsel

¹Likewise, we dismiss Draughn's challenge, as advanced for the first time in its comments on the agency report, to the RFP providing for only three or fewer awards. To be timely, this allegation needed to be filed prior to the date set for receipt of initial proposals.